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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

No. 54

UNITED STATES OF AMERICA, APPELLANT,

vs.

JACK GREEN AND GENERAL LABORERS' LOCAL NO. 397 OF GRANITE CITY, ILLINOIS, ETC.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS

FILED APRIL 28, 1955.

JURISDICTION NOTED OCTOBER 10, 1955

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

No. 54

UNITED STATES OF AMERICA, APPELLANT,

vs.

JACK GREEN AND GENERAL LABORERS' LOCAL NO. 397 OF GRANITE CITY, ILLINOIS, ETC.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS

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1-3 [File endorsement omitted]

No Prc. Pro. John B. Stoddart, Jr., U. S. Attorney

In the United States District Court, Southern District of Illinois
At the June Term thereof, A. D. 1953.

Docket No. 5236

VIO: Sec. 1951 Title 18 USC, Interference with Commerce by Threats and Violence

UNITED STATES OF AMERICA

JACK GREEN AND GENERAL LABORERS' LOCAL NO. 397 OF GRANITE CITY, ILLINOIS; A LABOR UNION AND VOLUNTARY ASSOCIATION OF WORKINGMEN AFFILIATED WITH INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABORERS UNION OF AMERICA

SOUTHERN DISTRICT OF ILLINOIS,
Southern Division, ss.:

INDICTMENT—Filed December 17, 1953

(Bail $2500.00 for Green)

The grand jury charges:

Count One

That on or about, to wit, April 13, A. D. 1953, at and adjacent to Chain of Rocks Canal, in the County of Madison, in the State of Illinois, in the Southern Division of the Southern District of Illinois and within the jurisdiction of this court, being a projected channel and conduit for traffic in interstate commerce on the Mississippi River and its tributaries, JACK GREEN and GENERAL LABORERS' LOCAL NO. 397 OF GRANITE CITY, ILLINOIS, A LABOR UNION AND VOLUNTARY ASSOCIATION OF WORKINGMEN AFFILIATED WITH INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABORERS UNION OF AMERICA, hereinafter called the Defendants, did unlawfully and wilfully obstruct, delay and affect, and attempt to
4 obstruct, delay and affect commerce as that term is defined in and by Section 1951 of Title 18, United States Code, to wit, interstate commerce, and the movement of articles and commodities in such commerce by extortion, as that term is defined in and by said Section of said United States Code, that is to say, by then and there attempting to obtain from another, to wit, one Arthur W. Terry, Jr., then doing business under the name, style

and description of Terry Engineering Co., and then and there engaged in executing a contract with the United States of America for the maintenance of a levee bordering said canal and theretofore erected and constructed as a part thereof, certain property of the said Arthur W. Terry, Jr., to wit, his money, in the form of wages to be paid for imposed, unwanted, superfluous and fictitious services of laborers commonly known as swampers, in connection with the operation of machinery and equipment then being used and operated by said Arthur W. Terry, Jr. in the execution of his said contract for maintenance work on said levee, the attempted obtaining of said property from said Arthur W. Terry, Jr. as aforesaid being then intended to be accomplished and accomplished with the consent of said Arthur W. Terry, Jr., induced and obtained by the wrongful use, to wit, the use for the purposes aforesaid, of actual and threatened force, violence and fear made to said Arthur W. Terry, Jr. and his employees and agents then and there being, in violation of Section 1951 of Title 18, United States Code.

Count Two

That on or about, to wit, March 26, A. D. 1953, at and adjacent to Chain of Rocks Canal, in the County of Madison, in the State of Illinois, in the Southern Division of the Southern District of Illinois and within the jurisdiction of this court, being a projected channel and conduit for traffic in interstate commerce on the Mississippi River and its tributaries, JACK GREEN and GENERAL LABORERS' LOCAL NO. 397 OF GRANITE CITY, ILLINOIS; A LABOR UNION AND VOLUNTARY ASSOCIATION OF WORKINGMEN AFFILIATED WITH INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABORERS UNION OF AMERICA, hereinafter called the Defendants, did unlawfully and wilfully obstruct, delay and affect, and attempt to obstruct, delay and affect commerce as that term is defined in and by Section 1951 of Title 18, United States Code, to wit, interstate commerce, and the movement of articles and commodities in such commerce by extortion, as that term is defined in and by said Section of said United States Code, that is to say, by then and there attempting to obtain from another, to wit, one Ralph Wright, Jr., then doing business under the name, style and description of Midway Excavating Co., and then and there engaged in executing a contract with the United States of America for the maintenance of a levee bordering said canal and theretofore erected and constructed as a part thereof, certain property of the said Ralph Wright, Jr., to wit, his money, in the form of wages to be paid for imposed, unwanted, superfluous and fictitious services of laborers commonly known as swampers, in connection with the operation of machinery and equipment then being used and operated by said Ralph Wright, Jr. in the execution of his said contract

for maintenance work on said levee, the attempted obtaining of said property from said Ralph Wright, Jr., as aforesaid being then intended to be accomplished and accomplished with the consent of said Ralph Wright, Jr., induced and obtained by the wrongful use, to wit, the use for the purposes aforesaid, of actual and threatened force, violence and fear made to said Ralph Wright, Jr., and his employees and agents then and there being; in violation of Section 1951 of Title 18, United States Code.

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Count Three

That JACK GREEN and GENERAL LABORERS' LOCAL NO. 397 OF GRANITE CITY, ILLINOIS, A LABOR UNION AND VOLUNTARY ASSOCIATION OF WORKINGMEN AFFILIATED WITH INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABORERS' UNION OF AMERICA, hereinafter called the Defendants, on or about, to wit, April 13, A. D. 1953, at, to wit, Chain of Rocks Canal, in the County of Madison, in the State of Illinois, in the Southern Division of the Southern District of Illinois, and within the jurisdiction of this court, did unlawfully and wilfully, in furtherance of a plan and purpose to commit the offense hereinbefore charged in Count One of this Indictment, the allegations with respect to which said offense are herein by this reference to said Count One incorporated in this Count Three of this Indictment with the same force and effect as though the tenor of the same were here repeated, did commit and threaten physical violence to the person and property of the said Arthur W. Terry, Jr., then and there being, all with the intent and purpose of obstructing, delaying and affecting commerce; to wit, interstate commerce; and the movement of articles and commodities in such commerce as aforesaid; all in violation of Section 1951 of Title 18, United States Code.

Count Four

That JACK GREEN and GENERAL LABORERS' LOCAL NO. 397 OF GRANITE CITY, ILLINOIS, A LABOR UNION AND VOLUNTARY ASSOCIATION OF WORKINGMEN AFFILIATED WITH INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABORERS' UNION OF AMERICA, hereinafter called the Defendants, on or about, to wit, March 26, A. D. 1953, at, to wit, Chain of Rocks Canal, in the County of Madison, in the State of Illinois, in the Southern Division of the Southern District of Illinois, and within the jurisdiction of this court, did unlawfully and wilfully, in furtherance of a plan and purpose to commit the offense hereinbefore charged in Count

7 Two of this Indictment, the allegations with respect to which said offense are herein by this reference to said Count Two incorporated in this Count Four of this Indictment with the same force and effect as though the tenor of the same were here repeated, did

commit and threaten physical violence to the person and property of one Frank P. Lühring, then and there an employee of the said Ralph Wright, Jr., and to the property of said Ralph Wright, Jr., then and there being; all with the intent and purpose of obstructing, delaying and affecting commerce, to wit, interstate commerce, and the movement of articles and commodities in such commerce as aforesaid, all in violation of Section 1951 of Title 18, United States Code.

Count Five

That JACK GREEN and GENERAL LABORERS' LOCAL NO. 397 OF GRANITE CITY, ILLINOIS, A LABOR UNION AND VOLUNTARY ASSOCIATION OF WORKINGMEN AFFILIATED WITH INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABORERS UNION OF AMERICA, hereinafter called the Defendants, on or about, to wit, April 13, A. D. 1953, at, to wit, Chain of Rocks Canal, in the County of Madison, in the State of Illinois, in the Southern Division of the Southern District of Illinois and within the jurisdiction of this court, did unlawfully and wilfully commit and threaten physical violence to the person and property of one Arthur W. Terry, Jr., in furtherance of a plan and purpose of said Defendants to obstruct and affect commerce, to wit, interstate commerce, and the movement of articles and commodities in such commerce and to attempt so to do, by extortion, that is to say, by attempting to obtain from said Arthur W. Terry, Jr., his property, to wit, his money, with his consent, by the wrongful use, in manner and form aforesaid, by said Defendants, of actual and threatened force, violence and fear, to the person of said Arthur W. Terry Jr.; in violation of Section 1951, Title 18, United States Code.

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Count Six

That JACK GREEN and GENERAL LABORERS' LOCAL NO. 397 OF GRANITE CITY, ILLINOIS, A LABOR UNION AND VOLUNTARY ASSOCIATION OF WORKINGMEN AFFILIATED WITH INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABORERS UNION OF AMERICA, hereinafter called the Defendants, on or about, to wit, March 26, A. D. 1953, at, to wit, Chain of Rocks Canal, in the County of Madison, in the State of Illinois, in the Southern Division of the Southern District of Illinois and within the jurisdiction of this court, did unlawfully threaten physical violence to the person of one Frank P. Lühring, then and there an employee of another, to wit, Ralph Wright, Jr., in furtherance of a plan to obstruct and affect commerce, to wit, interstate commerce, and the movement of articles and commodities in such commerce, and to attempt so to do by extortion, that is to say, by attempting to obtain the property, to wit, the money of said Ralph Wright, Jr., with his consent, by the wrongful use, that is to say, the use in manner and form afore-

said by said Defendants, of threatened force, violence and fear, to the person of said Frank P. Lubning, in violation of Section 1951, of Title 18, United States Code.

Count Seven

That on or about, to wit, April 13, A. D. 1953, at, to wit, Chain of Rocks Canal, in the County of Madison, in the State of Illinois, in the Southern Division of the Southern District of Illinois and within the jurisdiction of this court, JACK GREEN and GENERAL LABORERS' LOCAL NO. 397 OF GRANITE CITY, ILLINOIS, A LABOR UNION AND VOLUNTARY ASSOCIATION OF WORKINGMEN AFFILIATED WITH INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABORERS UNION OF AMERICA, hereinafter called the Defendants, did then and there unlawfully commit and threaten physical violence to the person of one Arthur W. Terry, Jr., and commit and threaten to commit acts of physical violence to the property of said
9 Arthur W. Terry, Jr., then and there being, all in furtherance of a plan and purpose of said Defendants to obstruct, delay and affect commerce as that term is defined in Section 1951 of Title 18, United States Code, to wit, interstate commerce, and the movement of divers articles and commodities in such commerce by extortion; all in violation of Section 1951, Title 18, United States Code.

Count Eight

That on or about, to wit, March 26, A. D. 1953, at, to wit, Chain of Rock Canal, in the County of Madison, in the State of Illinois, in the Southern Division of the Southern District of Illinois and within the jurisdiction of this court, JACK GREEN and GENERAL LABORERS' LOCAL NO. 397 OF GRANITE CITY, ILLINOIS, A LABOR UNION AND VOLUNTARY ASSOCIATION OF WORKINGMEN AFFILIATED WITH INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABORERS UNION OF AMERICA, hereinafter called the Defendants, did then and there unlawfully threaten physical violence to the person of one one Frank P. Lubning, and did threaten physical violence to the property of one Ralph Wright, Jr., then and there being, all in furtherance of a plan and purpose of said Defendants to obstruct, delay and affect commerce, as that term is defined in Section 1951 of Title 18 of the United States Code, to wit, interstate commerce, and the movement of divers articles and commodities in such commerce by extortion, that is to say, by means of obtaining the property, to wit, the money of said Ralph Wright, Jr., with his consent, induced and brought about by the wrongful use, to wit, the use in violation of Section 1951 of Title 18, United States Code, of threats of force, violence and fear, so made as aforesaid by said Defendants to said Frank P. Lubning; all in violation of Section 1951, of Title 18, United States Code.

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Count Nine

That JACK GREEN and GENERAL LABORERS LOCAL No. 397 OF GRANITE CITY, ILLINOIS, A LABOR UNION AND VOLUNTARY ASSOCIATION OF WORKINGMEN AFFILIATED WITH INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABORERS UNION OF AMERICA, hereinafter called the Defendants, on or about, to wit: the first day of January, A. D. 1953, and for a long period of time prior thereto, and continuously thereafter from that date up to and including the date of the return of this indictment, at, to wit, the County of Madison, in the State of Illinois, in the Southern Division of the Southern District of Illinois and within the jurisdiction of this court, did unlawfully, wilfully and knowingly conspire, that is to say, did combine, confederate, arrange and agree together, and with each other, and with divers other persons whose names are to the grand jurors unknown, to commit, in said Southern Division of the Southern District aforesaid, divers offenses in violation of the provisions of Section 1951 of Title 18, United States Code, by obstructing, delaying and affecting commerce, to wit, interstate commerce, and the movement of articles and commodities in such commerce, by extortion, and to attempt so to do and to commit and threaten physical violence to divers persons and the property of such persons, in furtherance of a plan and purpose to commit offenses in violation of said Section 1951, to wit, the several offenses hereinbefore in this Indictment charged in Counts One to Eight, both inclusive, the allegations of which said Counts are here incorporated in this the Ninth Count of this Indictment by this reference thereto, with the same force and effect as though said allegations were here set forth in full, and divers other like offenses against said Section; all in violation of Section 1951 of Title 18, United States Code.

A True Bill.

DORIC C. PORTER,
Foreman.

JOHN B. STODDART, JR.,
United States Attorney.

Indorsed. Filed December 17, 1953. G. W. Schwaner, Clerk.

12 Judge's Notes Re: United States District Court

Docket 5236

TRANSCRIPT OF DOCKET ENTRIES

12/28/53. Defts. present in open Court with counsel. Pleas of not guilty, by each dft. with leave to withdraw same and to file motions attaching indictment in 30 days.

1/27/54. Entry of Appearance for Jack Green & Gen. Laborer's Local #397 by A. M. FitzGerald Filed. Withdrawal of Plea of Not Guilty of Defts Green & Gen. Lab. Local Filed. Mo. to Strike by Defts. Green & Gen. Lab. Local Filed. Mo. to Dismiss Ind. on all Counts thereof by Defts. Jack Green & Gen. Laborers' Local Filed.

2/23/54. Supplemental Motion Filed by Defts. Jack Green & Gen. Laborer's Local.

3/18/54. (J. Ajlair)—Leave to deft. to file additional supplemental motion. Same filed. Cause heard. Taken under advisement.

3/19/54. Mo. to Strike Additional Supplemental Mo. Filed by Plf. and Proof of Mailing.

4/16/54. Deft. motion to dismiss denied. Deft. motion to strike denied. Deft. supplemental motion denied. Deft. Additional Supplemental motion denied. Plt. motion to strike deft. additional supplemental motion withdrawn.

5/14/54. Defts. present in open court, in person and by attorney. Deft. Green being arraigned entered a plea of not gilty herein. Deft. "Laborer's Local" entered plea of not gilty by and through A. M. FitzGerald, its attorney. Case is set for jury trial on September 14, 1954, at 10 A. M. C. D. T.

9/14/54. Cause called for jury trial, all parties answer ready for trial. Petit jury called, selected and sworn to try issues, order of court that alternate jurors be called and accepted. 12 jurors and 1 alternate juror. Order of court by agreement of all counsel that all witnesses are excluded from the court room. Opening statements by plaintiff on the part of Asst. U. S. Attorney, Marks Alexander only. Order of court that special venire issue and that the U. S. Marshal pick up 5 petit jurors to report for service at 2:00 o'clock A. M. this date. Order of court that speci. venire issue and that the U. S. Marshal pick up 6 petit jurors to report immediately. By order of court oath is given to special court reporter, Samuel Goldberg as official court reporter of this court in this jury trial to report all evidence and exhibits in this jury trial. Order of court that court is adjourned until 10 o'clock A. M. (CDT) tomorrow.

9/15/54. Jury trial resumed. Opening statement by defendants' evidence by USA in part.

9/16/54. Jury trial resumed—evidence by USA in part.

9/17/54 Jury trial resumed—evidence by USA in part.

9/20/54 Jury trial resumed. Government rests. Defendants' motion to direct a verdict finding Jack Green not guilty filed.—Defts' mo. to direct a verdict finding General Laborer's Local No. 397 of Granite City, Ill. etc. not guilty filed. Cause heard on Defts' mo. at the close of Gov. evidence to direct a verdict finding Jack Green not guilty. Order of court that Mo. be denied. Cause heard on Defts' mo. at close of Gov. evidence to direct a verdict finding General Laborer's Local No. 397 of Granite City, Ill. etc. not guilty. Order of court that motion be denied. Evidence by Defts. in part.

13 9/21/54 Jury trial resumed. Evidence by Defendants in part.

9/22/54 Jury trial resumed—evidence by Defendants in part.

9/23/54 Jury trial resumed—evidence by Defendants—Defendants rest.

9/24/54 Jury trial resumed. Rebuttal evidence by USA. USA rests. Defts. rest. Defts. mo. to direct a verdict finding Jack Green not guilty filed. Defts. mo. to direct a verdict finding General Laborers' Local 397 etc. not guilty filed. Cause heard by court on motion of deft. Jack Green at close of all evidence to direct a verdict finding the deft. not guilty. Order of court mo. taken under advisement. Motion by U. S. Attorney by Marks Alexander to elect to proceed on counts 1, 2, 4 and 9. Order of court motion allowed. Order of court by agreement of counsel each side is allotted two hours each for closing arguments. Closing arguments by USA. Closing arguments by Defendants. Court instructs jury. Order of court oath is given to officer in charge of jury. Order of court that alternate juror Clay Margrave be discharged. Jury retires for verdict. Jury returns verdict into open court "We, the Jury find the deft. Jack Green guilty on counts 1 and 2 and not guilty on counts 4 and 9, filed and ent. jury returns verdict into open court. "We, the Jury find the Deft. General Laborers Local 397 of Granite City, Illinois, a Labor Union and Voluntary assn. of Workingmen Affiliated with International Hod Carriers Building and Common Laborers Union of America guilty on Counts 1 and 2 and not guilty on counts 4 and 9. Filed & ent. Motion by deft. counsel and order of court that defendants may file any motions in case within 10 days, ent.

10/4/54 Mo. of Deft. Jack Green in Arrest of Judgment filed. Mo. of Deft Green for Judgment of Acquittal and in Alternative for new trial filed. Mo. of deft. Gen. Lab. Local # 397 in Arrest of Judgment filed. Mo. of Deft. Gen. Lab. Local # 397 for Judgment of Acquittal and in alternative for new trial filed.

11/1/54 Cause heard on Mo. of deft. Jack Green in Arrest of for Judgment of Acquittal and in Alternative for new trial. Mo.

taken under advisement. Mo. of Gen. Laborers Local # 397 in Arrest of Judgment Mo. taken under advisement. Deft. Jack Green renews mo. made at close of Gov't evidence and at close of all evidence to direct a verdict finding Deft. not guilty. Mo. taken under advisement. Deft. Gen. Lab. Local # 397 renews mo. made at close of Gov't. evidence and at close of all evidence to direct a verdict finding Defts not guilty. Mo. taken under advisement.

1/24/55. Memorandum opinion of Judge Adair re: Motion in Arrest of Judgment; Order on Motions in Arrest of Judgment; Judgment herein on Verdict of Jury finding said defts guilty on cts one and two of said indictment, be and is hereby arrested. (Order made (See order)

2/15/55. Leave to US Attorney to dw. Reporters Transcript of proceedings herein. Same to be returned in 90 days (Adair, J.)

2/21/55. Notice of Appeal by U. S. filed (Proof of Service of Copy)

2/28/55. Mo. for ext. of time to file Defendant-appellee's Praecipe for Sup. Record—Proof of Notice—Prayer allowed. Time ext. to 3/22/55 (See Order)

3/15/55. Defts.-Appellee's Cross-Desigatnon & Praecipe for Ad'l Record—Proof of Service Thereto Attached.

3/17/55. Amendment to Cross-Designation & Praecipe for Ad'l. Record on Appeal—Proof of service thereto attached.

4/19/55. Appellant's Mo. for Ext. of Time to Docket Appeal, Affidavit & Proof of Service. Order ext. time to Apr. 29, 1955 to docket appeal filed & ent. (Adair, J.) Supplemental Designation & Proof of Service Filed.

II. Docket Entries—Criminal Docket No. 17, U. S. District Court

Docket # 5236

12/17/53. Return of Crim. Ind. Ent. Crim. Ind. Filed (June Term 1953)

12/28/53. Plea of not guilty by each Deft. with leave to wdw same & file motions.

1/27/54. Entry of Appearance for Jack Green & General Laborer's Local # 397 by A. M. FitzGerald filed. Withdrawal of Plea of Not Guilty of Defts. Green & Gen. Laborer's Local # 397 filed. Mo. to Strike for Green & Gen. Laborer's Local # 397 filed. Mo. to Dismiss Indictment and all Counts Thereof by Defts' Jack Green & Gen. Laborer's Local # 397 filed.

2/23/54. Supplemental Motion filed by Defts. Jack Green & Laborer's Local # 397.

3/18/54. Additional Supplemental Mo. by Defts. to Dismiss Ind. filed.

3/19/54. Mo. to Strike Additional Supplemental Motion filed by Plaintiff & Proof of Mailing.

3/18/54. Cause hd. on Defts. Mo. to Dismiss. Leave to said Defts. to file an Ad'l. Sup Mo.—& taken under adv. ent. (Adair, J.)

4/16/54. Mo. to dismiss; hrd. denied—Mo. to Strike denied. Sup. Mo. to Dismiss Denied. Ad'l. Sup. Mo. to Dismiss denied. Plts. Mo. to Strike Defts.' Sup. Mo. (Adl.) withdrawn ent. (Adair, J.)

5/14/54. Plea of not guilty by Deft. Green ent. (Adair) Plea of not guilty by Deft. "Laborer's Local" ent. Case set for jury trial 9/14/54 at 10 A. M. CDT (Adair, J.)

9/14/54. Trial by jury in part—alternate juror ordered ent. (Adair, J.)

9/15/54. Trial resumed ent.

9/16/54. Trial resumed ent.

9/17/54. Trial resumed ent.

9/20/54. Trial resumed evidence on behalf of Pltf. concluded. Mo. by ea. Deft. for directed verdict. Mo. denied ent. Mo. by Jack Green for Directed Verdict filed. Mo. by General Laborers' Local for Directed Verdict filed.

9/21/54. Trial resumed ent.

9/22/54. Trial resumed ent.

9/23/54. Trial resumed ent.

9/24/54. Trial resumed—at close of all evidence Defts. move for directed verdict—Motions heard and taken under adv.—Motion by U. S. Atty. to proceed on counts 1, 2, 4 & 9—Mo. allowed—trial concluded ent. Mo. by Deft. Green for directed verdict filed. Mo. by General Laborers Local for directed verdict filed. Verdicts of jury filed & ent. (Jury finds each Deft. guilty on counts 1 and 2 and not guilty on counts 4 & 9) On Mo. of Defts. ordered that Defts. may file any mo. within 10 das. ent.

10/4/54. Mo. of Deft. Jack Green in Arrest of Judgment filed. Mo. of Deft. Jack Green for Judgment of Acquittal in Alternative for New Trial filed. Mo. of Deft. Gen. Laborers' Local 397 in Arrest of Judgment filed. Mo. of Deft. Gen. Laborers' Local No. 397 for Judgment of Acquittal & in Alternative for New Trial filed.

10/13/54. 45 subpenas on behalf of Pltf. filed.

11/1/54. Cause hd on mo. of Defts. in arrest of Judg. & for Judg. of Acquittal or in the alternative for a new trial & taken under adv. ent. Defts. renew motions made at close of Govt's. evidence for directed verdict—motions heard & taken under adv. ent. 15-49 (Adair, J.)

1/24/55. Memorandum opinion re: Motion in Arrest of Judgment filed. Order that Judgment on Verdict of Jury finding Defts. guilty on counts 1 and 2 be arrested filed & ent. (Adair, J.) Complete transcript of Testimony in 3 volumes filed.

2/21/55. Notice of appeal to Supreme Court of U. S. filed (Proof of Service Attached)

2/23/55. Duplicate copy of Notice of Appeal together with statement of Docket Entries to Clerk Supreme Ct.

2/28/55. Mo. for ext. of time to file Deft's.-Appellees' Praecipe for Sup. Record filed—Notice of filing Mo. filed; Order ext. time to file Defts'-Appellees' Praecipe for Sup. Record to & inc. 3/22/55 ent. (Adair, J.)

3/15/55. Defts.-Appellees Cross-Designation & Praecipe for Ad'l. Record—Proof of Service Thereto Attached.

3/17/55. Amendment to Cross-Designation & Praecipe for Ad'l. Record on Appeal—Proof of Service Thereto Attached.

4/19/55. Appellant' Motion for Extension of time to docket appeal and file the Record thereof with the Clerk of the Supreme Court Filed—Affidavit and Proof of Service Thereto Attached.

4/19/55. Order Extending Time to April 29, 1955 within which to docket appeal record with Clerk of Supreme Court filed & ent. (Adair, J.)

4/19/55. Supplemental Designation & Praecipe for Additional Record on Appeal Filed—Proof of Service thereto attached.

50 In the District Court of the United States,
for the Southern District of Illinois,
Southern Division

Criminal No. 5236

THE UNITED STATES

vs.

JACK GREEN, ET AL.

VERDICT RE GREEN September 24, 1954

We, the Jury, find the defendant Jack Green guilty on counts one and two and not guilty on counts four and nine. Mack Witt, Foreman, Martha Burling, Florence Loos, Russell Greer, Hugh T. Kircher, Merlin Richter, William Keller, Homer Adams, L. C. Huseman, W. H. Bunte, Lewis Logsdon, Charles Troutner.

Indorsed: Filed Sept. 24, 1954, G. W. Schwaner, Clerk

51-62 In the District Court of the United States,
for the Southern District of Illinois,
Southern Division

Criminal No. 5236

THE UNITED STATES

vs.

GENERAL LABORER'S LOCAL NO. 397 OF GRANITE CITY, ILLINOIS, A LABOR UNION AND VOLUNTARY ASSOCIATION OF WORKINGMEN AFFILIATED WITH INTERNATIONAL HOD CARRIERS, BUILDING AND COMMON LABORERS UNION OF AMERICA;

VERDICT RE UNION—September 24, 1954

We, the Jury, find the defendant Gen. Laborers' Local No. 397 guilty on counts one and two, and not guilty on counts four and nine, Mack Witt, Foreman, Martha Burling, Florence Loos, Russell Greer, Hugh T. Kircher, Merlin Richter, William Keller, Homer Adams, L. C. Huseman, W. H. Bunte, Lewis Logsdon, Charles Troutner.

Indorsed: Filed Sept. 24, 1954. G. W. Schwaner, Clerk.

63 In the United States District Court Southern District of Illinois, Southern Division

[Title Omitted]

MOTION OF DEFENDANT JACK GREEN IN ARREST OF JUDGMENT—Filed October 4, 1954

Now comes the defendant, Jack Green, by his attorneys, Schaefer O'Neill and A. M. FitzGerald, and moves the Court to arrest the judgment in the above entitled cause for the following reasons:

(1) The indictment does not state facts sufficient to constitute an offense against the United States.

(a) The indictment fails to allege facts showing the nature of the commerce affected.

(b) The indictment fails to allege facts showing where and between what points any commerce was moving.

(c) The indictment fails to allege facts showing the origin of any commerce at any point within a state and its movement to or through any point outside such state.

(d) The indictment fails to allege facts showing in what manner or how any commerce was affected.

(e) The indictment fails to allege facts showing how any acts of this defendant affected any commerce.

61-68 (f) Counts 1 and 2 purport to charge extortion. However, each of said counts fails to allege sufficient facts to charge such extortion.

(g) Counts 1 and 2 fail to allege any facts comprising the wrongful use of actual or threatened force, violence or fear, and fail to allege in what respect defendant's conduct was wrongful, nor does either of said counts allege any act or acts constituting the use of actual or threatened force, violence and fear, nor how such act or acts affected any commerce.

(h) The indictment alleges mere conclusions as distinguished from facts and therefore fails to charge the ingredients of any crime.

(i) The indictment fails to allege any facts showing how any extortion affected any commerce, or any connection whatever between the two.

(j) The indictment fails to allege any criminal intents upon the part of this defendant.

(2) This court is without jurisdiction of the offense.

(a) The offense charged, if any, did not in any way involve interstate commerce.

(b) The facts alleged in the indictment fail to set forth an offense against the United States such as to give this court jurisdiction.

(c) A proper construction of the statute in question clearly indicates that it does not cover the type of activity charged in this indictment; to interpret the Act in question as covering the type of activity charged in this indictment, is to extend the jurisdiction of this court and the power of Congress beyond their constitutional limits.

SCHAEFER O'NEILL,
A. M. FITZGERALD,
Attorneys for defendant Jack Green

Indorsed. Filed Oct. 4, 1954. G. W. Schwaner, Clerk.

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In the United States District Court for the Southern District of Illinois, Southern Division

Docket No. 5236.

UNITED STATES OF AMERICA

vs.

JACK GREEN AND GENERAL LABORERS, LOCAL NO. 397 OF GRANITE CITY, ILLINOIS, A LABOR UNION AND VOLUNTARY ASSOCIATION OF WORKINGMEN AFFILIATED WITH INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABORERS UNION OF AMERICA

MEMORANDUM OPINION. January 24, 1955

The Defendant Jack Green and the Labor Union Local No. 397 were found guilty by a jury of violating the Federal Anti-Racketeering Act. After the trial, motions for judgment of acquittal, new trial, and in arrest of judgment were duly filed and argued. The motions for judgment of acquittal and for new trial are denied, but the Court is of the opinion that the motion in arrest of judgment should be allowed for the following reasons:

1. That the Court is without jurisdiction of the offense because the facts alleged in the Indictment fail to set forth an offense against the United States such as to give this Court jurisdiction.

2. A proper construction of the Anti-Racketeering Act clearly indicates that it does not cover the type of activity charged in the Indictment, and to interpret the act in question as covering the type of activity charged in the Indictment is to extend the jurisdiction of the Court, and the power of Congress beyond their Constitutional limits.

The main difficulty that I find with this proceeding is the charge of the Indictment, and in this connection I am concerned only
70 with Counts One and Two, under which the jury determined each of the Defendants were guilty. The pertinent provisions of the Indictment are as follows:

> "the Defendants did * * * obstruct, delay and affect and attempt to obstruct, delay and affect * * * interstate commerce * * * by extortion * * *, by attempting to obtain from Arthur W. Terry, Jr. * * * his money in the form of wages to be paid for imposed, unwanted, superfluous, and fictitious services of laborers * * *, the attempted obtaining of said money * * * being then intended to be accomplished and accomplished with the consent of said Arthur W. Terry, Jr., * * * by the wrongful

[illegible] of actual and threatened force, violence and fear.

The statute in question is Section 1951 of Title 18 U.S.C. commonly referred to as the Hobbs Act or the Anti-Racketeering Act. Before arriving at my decision I made a personal investigation as to the intent of Congress in the passage of this Act. This statute was originally passed in 1934, and there have been surprisingly few decisions construing this statute since its original passage.

The original Act specifically excepted the activity of the use of threats or force to obtain the payment of wages by a bona fide employer to a bona fide employee. In *United States v. Local 807* (1942) 315 U.S. 521, the Supreme Court analyzed this exception in considerable detail, and held that the statute did not apply where a person had used threats of force or other violent means to either achieve the status of an employee for a member of his Union or to secure wages for services. When the Hobbs Act was amended in 1946, no exception was made for cases where the property involved should be money demanded to be paid in the form of wages in the definition of extortion. Nevertheless, the Anti-Racketeering Act specifically provides that it is not to be construed to repeal, modify or affect the provisions of the Norris-LaGuardia Act and the Wagner Act.

When the motion to dismiss this indictment was argued, the main attack was directed to whether or not sufficient allegations were made to show that interstate commerce had been affected to
71 any degree. Very little if anything was said by the Defendants with respect to whether the charges of the indictment constituted a crime under the construction of Section 1951 of Title 18 U.S.C. At that time I sustained the indictment because in my opinion sufficient allegations as to interstate commerce were made.

It is now contended that the indictment does not state a cause of action within the meaning of the above section. In the usual extortion case, the extorter is obtaining money or property of another for his own benefit. This has generally been true in the racketeering cases which have been tried within the Southern District of Illinois, the Eastern District of Illinois, and the Eastern District of Missouri. In these types of cases, the original demand is unlawful, and certainly the means to carry out the demand in those cases were unlawful and within the purview of the statute and the constitutional limits of Congress to enact statutes to protect interstate commerce. In the case at hand, I conclude that Green's original activity in "attempting to obtain from Arthur W. Terry, Jr. his money in the form of wages to be paid for imposed, unwanted, superfluous and fictitious services of laborers" which said charge was seriously

controverted, was of itself not a violation of this statute, and within his rights and responsibilities as a Union representative which was not prohibited by this statute.

The United States Supreme Court has recently held that a demand by a Union representative for "feather bedding" is not an unfair labor practice. *American Newspaper Publishers Assn. v. N.L.R.B.*, 345 U.S. 100 (1953); *Labor Board v. Gamble Enterprises*, 345 U.S. 117 (1953). It seems incongruous that Congress intended that a lawful act on the part of Green in demanding money in the form of wages from the contractor to be paid for imposed, unwanted and fictitious services of laborers, accompanied by either threats of force or violence (which under State law constitute only misdemeanors) can be punished as a severe felony carrying a maximum of twenty years in the penitentiary under the Federal law, 72-73. When this Bill came before the House of Representatives, it was argued in detail by the members of the Judiciary Committee, and without a dissenting voice they maintained that this particular Bill meant just what it said. It was a Bill against robbery and extortion and had nothing whatever to do with labor laws, and their provisions. For this Court now to say this when a labor organization or officer of said organization advocated and demanded the employment of labor, which had been customary and agreed to by contractors and laborers in this Community, was a violation of this particular Act appears to me to be unreasonable.

After reading the Indictment I concur with the decision of Judge George H. Moore, in the Eastern District of Missouri, United States of America v. Richard Kavner, et al., Defendants, in a similar Indictment, and I conclude that the trouble in this Community and on this particular job was caused by a disagreement between the contractor and labor, and was in no wise an attempt to extort for the use of either the Union or the Defendant Green, any money or property of the contractor.

This memorandum opinion is to be filed with the Clerk of the Court, together with the written order of this Court which has been entered today arresting judgment.

(S.) J. LEROY ADAIR,
United States District Judge

ENTER: January 24, 1955

Indorsed: Filed Jan. 24, 1955, G. W. Schwarzer, Clerk

74 In the United States District Court
Southern District of Illinois
Northern Division

Criminal No. 5230

UNITED STATES OF AMERICA

JACK GREEN AND GENERAL LABORERS' LOCAL NO. 397 OF GRANITE CITY, ILLINOIS, A LABOR UNION AND VOLUNTARY ASSOCIATION OF WORKINGMEN AFFILIATED WITH INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABORERS UNION OF AMERICA

ORDER ON MOTIONS IN ARREST OF JUDGMENT—January 24, 1955

This cause now coming on for the decision of the Court with respect to the pending motions following full hearing and argument thereon heretofore held by the Court,

At the close of all of the evidence offered by the Government, the Defendants Jack Green and General Laborers' Local 397 of Granite City, Illinois, a Labor Union, each filed a motion for judgment of acquittal and at the close of all the evidence in the cause, each of the Defendants filed motion for judgment of acquittal, which motions the Court held under advisement; and now as to each of said four motions, after full hearing and due consideration by the Court, the same are denied.

Following the return of the verdict of the jury in this cause, the Defendants filed their separate motions for judgment of acquittal and in the alternative for a new trial; and now the Court, after full argument thereon, upon due consideration thereof, denies each of said motions.

Following the return of the verdict in this cause, the Defendants filed their separate motions in arrest of judgment, assigning 75 as reason therefor, among other things, the following:

1. * * * * *

2. This court is without jurisdiction of the offense

(a) The facts alleged in the Indictment failed to set forth an offense against the United States such as to give this Court jurisdiction.

(c) A proper construction of the statute in question clearly indicates that it does not cover the type of activity charged in this indictment; to interpret the Act in question as covering the type of activity charged in this Indictment is to extend the jurisdiction of this Court and the power of Congress beyond their Constitutional limits.

And now this Court, after full argument of the aforesaid motions in arrest of judgment, and upon due consideration thereof, doth hereby sustain the same solely on the grounds hereinabove set forth, and it is the order of the Court that the entry of the judgment herein on the verdict of the jury finding said Defendants guilty on Counts One and Two of said Indictment be and the same is hereby arrested.

ENTER: (S.) J. LEROY ADAIR,
Judge.

Dated: Jan. 24, 1955.

Indorsed: Filed Jan. 24, 1955, G. W. Schwaner, Clerk.

77. In the United States District Court for the Southern District of Illinois, Southern Division

Criminal Action No. 5236

UNITED STATES OF AMERICA

v.

JACK GREEN AND GENERAL LABORERS' LOCAL NO. 397 OF GRANITE CITY, A LABOR UNION AND VOLUNTARY ASSOCIATION OF WORKINGMEN AFFILIATED WITH INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABORERS UNION OF AMERICA

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES —Filed February 21, 1955

I. Notice is hereby given that the United States of America, the plaintiff above named, hereby appeals to the Supreme Court of the United States from the order entered on January 24, 1955, arresting judgment of conviction for insufficiency of the indictment, which charged that defendants obstructed, delayed and affected interstate commerce by extortion by attempting to obtain from an employer his money in the form of wages to be paid for imposed, unwanted, superfluous and fictitious services of laborers through the wrongful use of actual and threatened force, violence and fear in violation of 18 U.S.C. Section 1951.

This appeal is taken pursuant to 18 U.S.C. Section 3731.

II. The clerk will please prepare a transcript of the record in this case, for transmission to the Clerk of the Supreme Court of the United States; and include in said transcript the following:

1. Transcript of docket entries.

2. Indictment.
3. Verdict.
78-101 4. Motion in arrest of judgment.
5. Memorandum opinion rendered January 24, 1955.
6. Order granting motion in arrest of judgment and denying motion for judgment of acquittal and motion for a new trial.
7. Notice of Appeal.

III. The following question is presented by this appeal:

Whether the obstruction of commerce or the attempt to do so by the wrongful use of actual and threatened force, violence and fear, in an attempt to compel an employer to pay wages for unwanted, superfluous and fictitious services of laborers, is a violation of 18 U.S.C. 1951.

(S.) SIMON E. SOBELOFF,
Solicitor General.

PROOF OF SERVICE (omitted in printing)

102 Clerk's Certificate to foregoing transcript omitted in printing.

103 Supreme Court of the United States

ORDER NOTING PROBABLE JURISDICTION—October 10, 1955

Appeal from the United States District Court for the Southern District of Illinois.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is transferred to the summary calendar.

October 10, 1955.

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